

Minutes of the Board of Adjustment meeting held on Monday, March 11, 2013, at 5:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Roger Ishino, Chair
Travis Nay, Vice-Chair
Rosi Haidenthaller
Preston Olsen
Tom Halliday
Chad Wilkinson, Community & Economic Development Manager
Ray Christensen, Senior Planner
Tim Tingey, Administrative & Development Services Director
G.L. Critchfield, Deputy City Attorney
Citizens

The Staff Review meeting was held from 5:15 to 5:30 p.m. The Board of Adjustment members briefly reviewed the applications. An audio recording is available for review in the Community & Economic Development office.

Roger Ishino explained that variance requests are reviewed on their own merit and must be based on some type of hardship or unusual circumstance for the property and is based on state outlined criteria, and that financial issues are not considered a hardship.

APPROVAL OF MINUTES

Mr. Nay made a motion to approve the minutes from February 11, 2013 as submitted. Mr. Halliday seconded the motion.

A voice vote was made. The motion passed, 5-0.

CONFLICT OF INTEREST

There were no conflicts of interest for this agenda. Ms. Haidenthaller stated that she does not have a conflict of interest, but has spoken to one of the applicants.

CASE #1466 - VERIZON WIRELESS - 12 East 4800 South – Project #13-29

Nefi Garcia was the applicant present to represent this request. Ray Christensen reviewed the location and request of Verizon Wireless for an expansion of a nonconforming communications facility. The property addressed 12 East 4800 South, located in the M-C-C D (Murray City Center District) zone. Murray City Code 17.52.040 allows for a structure, occupied by a nonconforming use, to be added to, enlarged or moved to another location on the lot subject to authorization by the Board of Adjustment. The zone was changed on this property from C-D-C (Commercial Development Conditional) to M-C-C-D since its original approval. City code currently does not permit new monopoles and antenna structures within the M-C-C-D zone. An addition or expansion of a nonconforming use may be approved by the Board of Adjustment. The original communications pole and antennas was approved in 1991 within the C-D-C zone. The applicant is replacing three existing antennas (4 feet in length) with 3 new antennas (6 feet in length) and are adding 5 amplifiers onto the structure. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal meets the standards for an expansion of a nonconforming use. Therefore, staff recommends approval subject to a condition that the applicant shall obtain the necessary building permit prior to construction.

Nefi Garcia, 9847 South 100 West, Sandy, stated Verizon Wireless agrees with staff conditions and will comply.

Mr. Ishino asked if the adjustment to the antennas is to accommodate LTE. Mr. Garcia responded that the tower is LTE rated and this will be the next phase to make it better and faster.

Mr. Nay asked if there is a reason for the increase in height. Mr. Garcia stated that there is so much information other than voice going through the antennas that they need to be larger in order to push all the data through. Mr. Nay acknowledged that he understood that, but was interested in knowing why they had to add to the height. Mr. Garcia stated the ARF (Antenna Radio Frequency) Engineer determined they needed the height for optimization.

Mr. Halliday asked if they would always want a higher antenna. Mr. Garcia replied in the affirmative. Mr. Nay asked if this maintenance would be taken care of during the evening hours. Mr. Garcia replied in the affirmative, stating they call it the "maintenance window."

The meeting was opened for public comment. No comment was made and the public comment section was closed.

Mr. Halliday made a motion to approve the request for an expansion of a nonconforming communications facility at the property addressed 12 East 4800 South, subject to the following condition:

1. The applicant shall obtain the necessary building permit prior to construction.

Mr. Olsen seconded the motion.

Vote recorded by Mr. Christensen.

A _____ Mr. Ishino
A _____ Mr. Nay
A _____ Ms. Haidenthaller
A _____ Mr. Olsen
A _____ Mr. Halliday

Motion passed, 5-0.

Ms. Haidenthaller made a motion to approve the Findings of Fact as prepared by staff. Mr. Nay seconded the motion.

A voice vote was taken. Motion passed, 5-0.

CASE #1467 - CAROLA GROOS – 1186 East 5840 South – Project # 13-30

Carola Groos was the applicant present to represent this request. Ray Christensen reviewed the location and request for side yard setback variances for the property located at 1186 East 5840 South. The property is located in the R-1-8 zoning district. Murray City Code Section 17.100.080.B. Side Yard: The minimum depth of one of the

side yards of a residential dwelling in the R-1-8 zone is 8 ft., and the total width of the two required side yards shall not be less than 20 ft. The applicant is requesting side yard setback variances for a garage construction at the west side of the property. The applicant is requesting a 3 ft. 1 in. side yard setback variance on one side yard and a variance for a variance of 5 ft. 3 inches total side yards. The Murray zoning regulations require 20 ft. total side yards setback and a minimum of 8 ft. setback on one side yard whereas the applicant is proposing 14.75 ft. total side yard setback. The dwelling was constructed on the lot in 1958 according to the Salt Lake County Recorder's office. An older photo view of the front of the dwelling does not show a garage or carport at that time. There was no permit on record for the construction of the garage, with review of the permit records with Salt Lake County and Murray City. The property was annexed into Murray in 2002. The garage appears on an old aerial photo dated about 1981. Salt Lake County has required a minimum 8 ft. side yard setback. Information provided by the applicant indicates the home was purchased in 1995, and around 2002 some remodeling was done without a permit. The applicant was aware of the 8 ft. minimum setback as noted in her letter and changes were made without a permit to the garage, which had an existing noncompliant 5 ft. 9 inch side yard setback. The applicant decreased the side yard setback further to 4 ft. 11 in. A survey of this general neighborhood area shows there are many single garages and carports in the area. The lot is 81.54 ft. wide which is an average size for this R-1-8 zone. Based on review and analysis of the application material, subject site and surrounding area, and applicable Murray Municipal Code sections, the Community and Economic Development Staff finds that the proposal does not meet the standards for a variance. Therefore, staff recommends denial of the variance.

Carola Groos, 1186 East 5840 South, stated she purchased her house in January of 1995. She stated that one reason she purchased the home was for the attached garage. At the time of purchase the house was located in unincorporated Salt Lake County. The real estate agent, appraisal and the title report all said there was a 2 car garage, none of which indicated the garage did not have the proper variance. The appearance of the garage (interior and exterior) indicated it had been there for a long time. Approximately 10 years ago she repaired the outside garage wall. At that time Ms. Groos discovered the existing garage was 10 in. short of being able to install a new 2 car garage door. At the time the area she lived in was being annexed by Murray City. Ms. Groos called Murray City to ask about the 10 in. difference, but was told she was still part of unincorporated Salt Lake County. She then called Salt Lake County and was told she was part of Murray City. Because the wall was almost all the way torn out, she needed to make a decision. Since the cement floor that already existed extended past the 10 inches and the existing roof over the garage extended even more, she decided to go ahead with the garage project. Because she wasn't extending the roof (distance from roof to property line), she didn't feel she would need a variance for the additional 10 inches.

Ms. Groos stated that there was no way for her to know there was never a variance granted for the existing structure. She stated that last January she tried to refinance her home. When the appraiser came out he indicated there was a problem, because the garage was 18 ft. 10 in. wide as oppose to the 18 ft. shown on the Salt Lake County Assessor building sketch. The bank told her this would need to be resolved before she could refinance. Ms. Groos then decided to approach Murray City to get this resolved. Ms. Groos stated there had never been a complaint about the garage and the city had no idea there was even a problem until she brought it to the City's attention. Ms. Groos

received a letter from Murray City Community & Economic Development Department stating a variance was never granted. Yet the building sketch from the Salt Lake City Assessor's office shows the existence of an 18 ft. wide garage attached to her home. Without the variance approval she will lose the garage. This would devalue her property and cost her money she does not have to tear down and rebuild. Ms. Groos stated she doesn't feel she should be held liable for not obtaining a variance and the property owners before her failed to do while constructing the garage.

Ms. Gross stated in response to the letter she received from the Murray City Community & Economic Development Department, under section 3: Project review they state, "There is no permit on record with Salt Lake County and Murray City." Ms. Groos' response is, there are no permit records with Murray City because the original garage is over 32 years old and was not part of Murray City at that time. Although there is no permit on record with Salt Lake County, the building sketch on file with the Assessor's Office shows the garage as being 18 ft. wide. The existence of the garage was known about by the Assessor's Office, but nothing was ever done about it. Murray City also stated in their letter to Ms. Groos, "About 2002 some remodel was done without a permit." Ms. Groos' response is that she was not remodeling the garage at the time, but rather trying to repair the outer wall. When the new garage door would not fit, they moved the wall out 10 inches. The contractor didn't say anything to her about needing a permit to rebuild and extend the wall 10 inches. The letter from Murray City also stated, "The applicant was aware of the 8 ft. minimum setback." Ms. Groos stated she knew the 8 ft. was required on the side of a home when repairing the garage, but she never had a reason to go out and actually measure the distance until she realized she needed to repair the damage on the garage wall. At that point since the garage had been built like that, she assumed there was already a variance. Ms. Groos provided an enlarged map of her neighborhood showing all the houses that have attached single garages/carports and double garages/carports. Ms. Groos stated there are 116 homes with a double garage/carport and 15 with a double garage (some attached, some detached) that are closer than 8 ft. to the property line and would have required a variance. All homes shown are older than hers and she believes were granted variances by Salt Lake County.

Ms. Groos responded to staff's report regarding Variance Findings; A) She believes there is a hardship placed upon her as she will incur the expense of demolishing the existing garage in order to build a new one. To tell her now that the existing garage is illegal means she initially over paid for the house, she would lose value on the house and she would have to spend a lot of money to tear down an existing garage to comply with an easement that has never been enforced. The Salt Lake County Assessor has acknowledged the existence of an 18 ft. wide garage and has been taxing her on it all these years. (B) She believes there are special circumstances attached to her property in the fact that her garage was built over 32 years ago, long before it became part of Murray City. (C) According to the map she provided shows 116 homes out of 124 homes in the immediate vicinity of her home enjoy either a double garage/carport. (D) Murray annexed her neighborhood in 2002, but hasn't done anything about compliance to the General Plan until now. She doesn't feel that the issuance of a variance would be contrary to the public interest. She has never received a complaint from a neighbor. Ms. Groos also provided letters from neighbors supporting the request for a variance. (E) She doesn't feel the City shows any "spirit" of the land use ordinance when they want to comply exactly with their measurements and hold her liable for something she knew nothing about. Ms. Groos also feels there is plenty of access. If an additional gate on the

variance side would help the issue, she would be happy to have one installed. Ms. Groos provided pictures of the side of her garage showing the abutting property's home is set back further from hers. Therefore, the structures are not up against one another. Ms. Groos responded to the staff report regarding Unreasonable Hardship Analysis; Ms. Groos feels that to deny her use of her legally purchased property, is a special circumstance and would impose an unreasonable hardship. She doesn't feel like she should be punished for something she had nothing to do with and asked that the variance be granted.

Mr. Olsen asked why Ms. Groos wants the garage moved out 10 inches. Ms. Groos stated the new garage door wouldn't fit because the garage was short. She would not be extending the garage past the existing roof. Ms. Haidenthaller stated that it says in the staff report that she wants to expand the garage. Ms. Groos responded in the negative, stating she just wants to keep what is there.

Ray Christensen mentioned the setbacks are measured from the property line to the wall, not the roof. Ms. Haidenthaller addressed the drawings that were submitted by the applicant and asked what the difference is between the 4 ft. 11 in. shown on one drawing and the 5 ft. 9 in. on the other. Ms. Groos stated the measurement of 5 ft. 9 in. was when she moved into the house. Since it was shorter than the required 8 ft. she moved it out 10 in., which makes the existing condition 4 ft. 11 in.

Mr. Olsen asked why this issue came to the attention of Murray City. Ms. Groos stated she was trying to refinance the house and the appraiser told her the bank won't lend unless she resolves this. Mr. Nay asked when she completed the construction of the 10 inch addition. Ms. Groos stated it was approximately December 2001. Mr. Nay then asked staff when annexation took place. Mr. Christensen stated it was in 2002.

Ms. Haidenthaller stated she has talked with Ms. Groos on the phone about how Ms. Haidenthaller was instrumental in the annexation of that area in 2002. Between September of 2002 and January of 2003 the county put their petition on hold, because they wanted to have a feasibility study done. It was then released from the county in January of 2003. Therefore, when Ms. Groos wanted to do work on her garage, she tried to call the county and Murray City to find who she belonged to, but neither one of them could give her an answer.

Mr. Olsen asked what the minimum setback was with the county during that time. Ms. Haidenthaller stated the standard was an 8 ft. minimum side setback.

The discussion was then opened up to public comment.

Dennis Blain, 1176 East 5840 South, stated he is Ms. Groos' next door neighbor. Mr. Blain stated the garage on Ms. Groos' house was built in the early 1970's and she has made many improvements on that house since she has been there. He has no objections to the garage as is.

Chris Steffensen, 1242 Sandra Circle, stated they are a neighbor and feels that if Salt Lake County allowed that garage to be built and Murray City accepted the neighborhood as is, the City owes it to Ms. Groos to give her the variance.

Suzanne Brinkerhoff, 1280 East Lillie Circle, stated she is a neighbor and feels that Ms. Groos keeps the house up nicely. She is in favor of Ms. Groos getting the variance.

Phil Gibbons, 1016 East Belle Meadows Way, concurred with the previous citizen comments. He stated he is in favor of Ms. Groos getting the variance.

Jerry Pawl, 1175 East 5840 South, stated he lives across the street from Ms. Groos and feels that the variance should be granted.

A show of hands was made by those in attendance of who was in favor of granting the variance. Mr. Nay stated there were 12 hands raised.

The public comment section of the meeting was closed.

Mr. Halliday asked for an opinion from legal staff on whether or not this garage can be grandfathered in as it has been there for so long. Mr. Wilkinson stated that in general terms, legal non-conforming, or grandfathering means that at one time a structure was permitted. Grandfathering doesn't apply to structures that were built a long time ago. It means that at some point and time in history a permit was granted and it met the codes. Periodically codes change and because of that it now does not meet the current code. To be considered legal non-conforming it has to have at one time been considered legal by meeting the setbacks and ordinances. For this case, there is no indication that a permit was taken out for the structure by either Murray City or Salt Lake County. In addition, this case has never met the setbacks that have historically been 8 feet.

Mr. Olsen asked Mr. Wilkinson to clarify if he was referring to there not being any permits being pulled for the original construction of the garage in the 1970's and the improvements/expansion made by Ms. Groos 10 years ago. Mr. Wilkinson responded in the affirmative.

Mr. Christensen stated that he searched the county records as far back as the records went, he could not find any permits. Ms. Haidenthaller wondered if theoretically, because of the placement of the home when it was built, a variance was granted. Mr. Wilkinson made note that during staff review a recommendation is based on their findings such as; historical zoning records or building permits. In this instance there were no permits found.

Mr. Olsen asked what the zoning was in the 1970's and if a permit was needed. Ms. Haidenthaller asked staff how often the county can't find records. Mr. Wilkinson stated that by going to the county, typically they can find permits for older structures, if they exist.

Mr. Olsen asked if a variance is always recorded on a property. Mr. Wilkinson responded by saying the variance is not recorded once granted. Mr. Nay asked how large of a search was done to see if there has been a precedence set in the neighborhood. Mr. Wilkinson made note that each application is looked at on an individual basis. Staff doesn't go by what was done on another property, because variance findings require finding unique circumstances.

Mr. Halliday asked if Murray City has ever given out a permit for something that was actually wrong in which it violated side yard setbacks, but wasn't found out about until

after the project was complete. Mr. Wilkinson stated he could not answer that question. Mr. Wilkinson also made the comment that staff isn't in a position to say "there may have been," but in reality no one knows.

Mr. Olsen made note this piece of land isn't unique to any other piece of land in the neighborhood, but it does seem somewhat unique that the applicant was building onto the garage during the time period the property was being annexed from Salt Lake County to Murray City. He does feel it gives this case some uniqueness.

Ms. Haidenthaller stated one of the purposes of the spirit of the Board of Adjustments is to make decisions and exceptions to the rules based on the facts or the case that has been presented to them. In this case she does not feel that justice will be done if they require her to remove her garage. Mr. Olsen concurred.

Mr. Ishino stated there is emotion involved, but they Board must take a look at the staff's findings and documentation. He did want to reiterate that if a variance had been granted at one point, it is verifiable. Staff does have rules to follow and he appreciates the work they put into this case.

Mr. Halliday commented that when speaking about the spirit of the land use ordinance, the literal enforcement would cause undue hardship. Granting this would allow Ms. Groos to continue enjoyment of her property. His concern is that at the time the applicant wanted to make changes to her garage, neither the county or Murray City would work with her. Mr. Halliday stated he does not feel the variance affects the General Plan and he doesn't believe it's contrary to any portion of public interest to make that property change.

Mr. Nay feels granting a variance still means there has to be uniqueness to the land. He is struggling to find what is unique to the land.

Ms. Haidenthaller made a motion to grant a variance, allowing the existing structure to remain at the property addressed, 1186 East 5840 South. A) Removing a portion of the garage would be a hardship. In good faith she bought the home after many sources told her that it was a legal structure. B) Although a building permit has not been found, the structure has existed for over 40 years. At the time Ms. Groos wanted to make some improvements to the structure Murray City was in the process of annexing the area from Salt Lake County and no one was claiming jurisdiction to the area. C) Ms. Groos pointed out that having garages/carports are property rights that is enjoyed by others in the area. D) Does not feel this will affect the General Plan. E) Ms. Groos has tried to make it right and it would be unjust to make her tear part of her garage down.

Mr. Nay seconded the motion.

Vote recorded by Mr. Christensen.

A _____ Mr. Ishino
N _____ Mr. Nay
A _____ Ms. Haidenthaller
A _____ Mr. Olsen
A _____ Mr. Halliday

Motion passed, 4-1.

Mr. Halliday made a motion to allow staff to write up the Findings of Fact as stated by Ms. Haidenthaller and give authorization for the Chair to sign. Mr. Nay seconded the motion.

A voice vote was taken. Motion passed, 5-0.

OTHER BUSINESS

ELECTION OF OFFICERS FOR 2013

Ms. Haidenthaller made a motion for Travis Nay to become the new Chair and for Tom Halliday to become the new Vice-Chair.

Mr. Olsen seconded the motion.

Vote recorded by Mr. Christensen.

A ☐ Mr. Ishino
N ☐ Mr. Nay
A ☐ Ms. Haidenthaller
A ☐ Mr. Olsen
A ☐ Mr. Halliday

Motion passed, 4-1.

Mr. Olsen made note for the record that Mr. Ishino has done a great job this past year as Chair.

Meeting adjourned.

A handwritten signature in black ink, appearing to read 'Chad Wilkinson', is written over a horizontal line.

Chad Wilkinson, Manager
Community & Economic Development